

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 April 22, 2020

17 10:15 AM

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19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

Page 2

1 HEARING re Notice of Agenda / Agenda for April 22, 2020

2 Omnibus Hearing

3

4 HEARING re First Interim Fee Application of Dechert LLP, as
5 327(e) Special Counsel, for Compensation for Professional
6 Services Rendered and Reimbursement of Actual and Necessary
7 Expenses Incurred During the Period : 9/15/2019 to
8 1/31/2020, fee:\$5,252,892.22, expenses: \$815,614.96 (ECF
9 #933)

10

11 HEARING re First Application for Interim Professional
12 Compensation of Arnold & Porter Kaye Scholer LLP for
13 Allowance of Compensation and Reimbursement of Expenses as
14 Special Counsel for the Debtors for the Period from
15 September 16, 2019 through January 31, 2020 (ECF #934)

16

17 HEARING re Application for Interim Professional Compensation
18 / First Quarterly Fee Statement of King & Spalding LLP for
19 Compensation for Services Rendered and Reimbursement of
20 Expenses Incurred as Special Counsel to the Debtors and
21 Debtors in Possession for the Period From September 16, 2019
22 Through January 31, 2020, fee:\$5408371.90, expenses:
23 \$3845.40 (ECF# 935)

24

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1 HEARING re First Interim Fee Application of Wilmer Cutler
2 Pickering Hale and Dorr LLP for Allowance of Compensation
3 and Reimbursement of Expenses for Wilmer Cutler Pickering
4 Hale and Dorr LLP, Debtor's Attorney, period: 9/16/2019 to
5 1/31/2020, fee:\$448,644.25, expenses: \$3,529.30 (ECF #941)

6

7 HEARING re First Interim Application of Davis Polk &
8 Wardwell LLP for Compensation for Services Rendered and
9 Reimbursement of Expenses Incurred as Counsel to the Debtors
10 and Debtors in Possession for the Period: 9/15/2019 to
11 1/31/2020, fee: \$24,058,793., expenses: \$289,721.70
12 (ECF # 945)

13

14

15 HEARING re First Interim Fee Application of Jones Day for
16 Compensation for Services Rendered and Reimbursement of
17 Actual and Necessary Expenses Incurred as Special Counsel to
18 the Debtors for the Retention Period : 9/15/2019 to
19 1/31/2020, fee: \$1067512.46, expenses: \$12001.56 (ECF #948)

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1 HEARING re First Interim Fee Application of KPMG LLP as Tax
2 Consultant to the Debtors and the Official Committee of
3 Unsecured Creditors for Allowance of Interim Compensation
4 for Services Rendered and Reimbursement of Expenses for the
5 Period : 12/23/2019 to 1/31/2020, fee:\$580,539.30, expenses:
6 \$614.93 (ECF #950)

7

8 HEARING re Interim Application of Ernst & Young LLP for
9 Compensation and Reimbursement of Expenses for the Period:
10 9/15/2019 to 1/31/2020, fee:\$200,000.00, expenses:
11 \$29,161.00 (ECF #951)

12

13 HEARING re AlixPartners, LLP's First Interim Application for
14 the Period September 16, 2019 through January 31, 2020 for
15 Allowance of Compensation for Services Rendered and
16 for Reimbursement of Expenses Incurred as Financial Advisor
17 to the Chapter 11 Debtors, period: 9/16/2019 to 1/31/2020,
18 fee:\$7,223,413.00, expenses: \$324,981.79 (ECF #952)

19

20 HEARING re First Interim Fee Application Of Skadden, Arps,
21 Slate, Meagher & Flom LLP For Compensation For Services
22 Rendered And Reimbursement Of Expenses As Special Counsel To
23 The Debtors For The Period: 9/15/2019 to 1/31/2020, fee:
24 \$3,923,706.10, expenses: \$25,670.12 (ECF #958)

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1 HEARING re First Interim Fee Application of PJT Partners LP
2 as Investment Banker to the Debtors and Debtors-In
3 Possession for Allowance of Compensation for Services
4 Rendered and for the Reimbursement of all Actual and
5 Necessary Expenses Incurred for the Period : 9/15/2019 to
6 1/31/2020, fee:\$1,020,000.00, expenses: \$86,456.43
7 (ECF #973)

8

9 HEARING re First Interim Application of Jeffries LLC for
10 Allowance of Compensation Earned and Reimbursement of
11 Expenses Incurred as Investment Banker for the Official
12 Committee of Unsecured Creditors for the Period: 10/4/2019
13 to 1/31/2020, fee:\$900000, expenses: \$75203.89 (ECF #940)

14

15 HEARING re First Interim Fee Application of Bayard, P.A. for
16 Compensation for Services Rendered and Reimbursement of
17 Expenses as Co-Counsel to the Official Committee of
18 Unsecured Creditors for the Period : 9/29/2019 to 1/31/2020,
19 fee: \$950561, expenses: \$7715.34 (ECF #942)

20

21 HEARING re First Interim Application of Province, Inc.,
22 Financial Advisor to the Official Committee of Unsecured
23 Creditors of Purdue Pharma L.P., et al., for Compensation
24 and Reimbursement of Expenses for the Interim Period:
25 10/1/2019 to 1/31/2020, fee:\$4865202.5, expenses: \$31605.81

1 (ECF #946)

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3 HEARING re First Interim Fee Application of Akin Gump
4 Strauss Hauer & Feld LLP as Counsel to the Official
5 Committee of Unsecured Creditors of Purdue Pharma L.P., et
6 al., for Allowance of Compensation for Services Rendered and
7 Reimbursement of Expenses for the Period : 9/26/2019 to
8 1/31/2020, fee:\$9838245, expenses: \$165733.29

9 (ECF #947)

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11 HEARING re First Interim Fee Application of Kurtzman Carson
12 Consultants LLC as Information Agent to the Official
13 Committee of Unsecured Creditors for Allowance of
14 Compensation for Professional Services Rendered and for
15 Reimbursement of Actual and Necessary Expenses Incurred,
16 period: 11/1/2019 to 1/31/2020, fee:\$10729.22,
17 expenses: \$14991.54 (ECF #949)

18

19 HEARING re First Interim Fee Application of Brown Rudnick
20 LLP as Co-Counsel to the Ad Hoc Committee of Government and
21 Other Contingent Litigation Claimants for Services and
22 Reimbursement of Expenses Incurred for the period: 9/16/2019
23 to 1/31/2020, fee:\$1,135,221.75, expenses: \$11,073.89

24 (ECF #944)

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1 HEARING re First Interim Fee Application of FTI Consulting,
2 Inc. For Ad Hoc Committee of Governmental and Other
3 Contingent Litigation Claimants, Other Professional, period:
4 9/19/2019 to 1/31/2020, fee: \$3,183,065.00, expenses:
5 \$15,395.05 (ECF #954)

6

7 Application of Otterbourg P.C. As Co-Counsel of the Ad Hoc
8 Committee of Governmental and Other Contingent Litigation
9 Claimants, period: 9/16/2019 to 1/31/2020, fee:\$646,606.50,
10 expenses: \$2,956.87 (ECF #955)

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12 HEARING re First Interim Application of Gilbert LLP, as Co-
13 Counsel to the Ad Hoc Committee of Governmental and Other
14 Contingent Litigation Claimants period: 9/16/2019 to
15 1/31/2020, fee:\$946,935.75, expenses: \$22,218.14 (ECF #956)

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17 HEARING re First Interim Application of Kramer Levin
18 Naftalis & Frankel LLP, as Co-Counsel to the Ad Hoc
19 Committee of Governmental and Other Contingent Litigation
20 Claimants, For Allowance of Compensation for Professional
21 Services Rendered and For Reimbursement of Actual and
22 Necessary Expenses Incurred For the Period: 9/16/2019
23 to 1/31/2020, fee:\$2,635,092.25, expenses: \$47,449.28
24 (ECF #957)

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1 HEARING re Application to Employ Cole Schotz P.C. as
2 Efficiency Counsel to Unsecured Creditors Committee
3 [ECF No. 1013]

4

5 HEARING re Response to Motion Ad Hoc Committee for NAS
6 Children's Response to the Independent Public School
7 Districts' Motion to Submit Claim to Mediation (related
8 document(s)1038, 998, 1025) filed by Scott S. Markowitz on
9 behalf of Ad Hoc Committee of NAS Babies (ECF #1055)

10

11 HEARING re Motion for Relief from the Automatic Stay
12 [Allergan Finance LLC] [ECF No. 909]

13

14 HEARING re Opposition of New York Plaintiffs to Defendants
15 (Allergan) Motion For Relief From The Automatic Stay
16 (related document(s)909) (ECF 979)

17

18 HEARING re Debtors' Objection to Co-Defendants' Motion for
19 Relief from the Automatic Stay (related document(s)909)
20 (ECF #1048)

21

22 HEARING re Opposition of the Non-Consenting States to Opioid
23 Defendants' Motion for Relief from the Automatic Stay
24 (related document(s)909) filed by Andrew M. Troop on behalf
25 of Ad Hoc Group of Non-Consenting States (ECF #1049)

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1 HEARING re Objection of the Official Committee of Unsecured
2 Creditors to the Motion for Relief from the Automatic Stay
3 Filed by Defendants in the New York Opioid Litigation and
4 Joinder in the Debtors' Objection Thereto (related
5 document(s)909, 1048) (ECF #1050)

6

7 HEARING re Ad Hoc Committee's Objection and Joinder in the
8 Debtors' Objection to Co- Defendants' Motion for Relief from
9 the Automatic Stay (related document(s)909, 1048)
10 filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee
11 of Governmental and Other Contingent Litigation Claimants
12 (ECF #1054)

13

14 HEARING re Reply to Motion (related document(s)909) filed by
15 George Robert Gage Jr on behalf of Allergan Finance LLC.
16 (ECF #1063)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 DAVIS POLK & WARDWELL LLP

4 Attorneys for

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6 New York, NY 10017

7

8 BY: MARSHALL HUEBNER (TELEPHONICALLY)

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10 GAGE SPENCER

11 Attorneys for Allergan Finance, LLC

12 410 Park Avenue

13 New York, NY 10022

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15 BY: GEORGE GAGE (TELEPHONICALLY)

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17 O'MELVENY & MEYERS LLP

18 Attorneys for Johnson & Johnson, Janssen

19 Pharmaceuticals, Inc., Ortho-McNeil-Janssen

20 Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals

21 400 South Hope Street, #1950

22 Los Angeles, CA 90071

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24 BY: EVAN JONES

25

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1 NEW YORK ATTORNEY GENERAL'S OFFICE

2 The Capitol

3 Albany, NY 12224

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5 BY: DAVID NACHMAN (TELEPHONICALLY)

6

7 PILLSBURY LAW

8 Attorneys for Ad Hoc Group of Non-Consenting States

9 31 West 52nd Street

10 New York, NY 10019

11

12 BY: ANDREW TROOP (TELEPHONICALLY)

13

14 ALSO PRESENT TELEPHONICALLY:

15

16 DANIELLE GENTIN-STOCK

17 JENNIFER CHRISTIAN

18 MARK LIGHTNER

19 DONALD CREADORE

20 CHRISTOPHER PERKINS

21 MEGAN RUNDLET

22 LAUREN KELLEHER

23 SHEILA BIRNBAUM

24 HAYDEN COLEMAN

25 SCOTT DAVIDSON

1 THOMAS LAURIA
2 J. CHRISTOPHER SHORE
3 ALICE TSIER
4 SHMUEL VASSER
5 ANDREW ALFANO
6 SARAH BRYAN
7 DANIELLE LEVINE
8 CASEY NUNEZ
9 HOWARD STEINBERG
10 BROOKS BARKER
11 SCOTT BICKFORD
12 CONSTANTINE DEAN POURAKIS
13 BENJAMIN KAMINETZKY
14 JAMES MCCLAMMY
15 NEGISA BALLUKU
16 JASMINE BALL
17 RYAN BUEHLER
18 MICHELLE BURKART
19 LAWRENCE FOGELMAN
20 ERIC HWANG
21 JEFFREY ROSEN
22 DAVID KLAUDER
23 ANNA KORDAS
24 NATASHA LABOVITZ
25 ANNA McDERMOTT

1 MAURA MONGHAN
2 GOEFF MULVHILL
3 JAMIE O'CONNELL
4 ROBERT PADJEN
5 JEFFREY ROSENTHAL
6 DANIEL E. STROIK
7 JENNIFER BRAGG
8 ALIX BROZMAN
9 ANTHONY CLARK
10 ALYSSA DACUNHA
11 JESSE DELCONTE
12 KENNETH H. ECKSTEIN
13 CARLINE CANGE
14 RORY GRIESS
15 JEREMY KLEINMAN
16 ALEX LEES
17 JENNIFER MADDEN
18 RACHAEL RINGER
19 GEORGE SHUSTER
20 ARTEM SKOROSTENSKY
21 CLAUDIA SPRINGER
22 KAITLYN SUNDT
23 MELISSA VAN ECK
24 CATRINA SHEA
25 JENNIFER FEENEY

1 JUSTIN ALBERTO
2 MICHAEL ATKINSON
3 GERARD CICERO
4 ERIN FAY
5 DAVID MOLTON
6 JEREMY PEARLMAN
7 STEVEN POHL
8 ROBIN SPIGEL
9 SARA BRAUNER
10 MITCHELL P. HURLEY
11 GREGORY JOSEPH
12 ARIK PREIS
13 NICHOLAS PREY
14 JEREMY RYAN
15 RYAN D. SLAUGH
16 AARON STULMAN
17 GERARD UZZI
18 ADAM HABERKORN
19 MATTHEW PIERS
20 MARGARET TRUESDALE
21 MELANIE CYGANOWSKI
22 VICTOR ORDONEZ
23 PAU SCHWARTZBERG
24 DONNA WELCH
25 TIMOTHY KNAPP

1 THOMAS MAEGLIN

2 EMILY GRIMM

3 KAMI QUINN

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1 P R O C E E D I N G S

2 THE COURT: Hello. Good morning. This is Judge
3 Drain. This is a wholly telephonic hearing. I know there
4 are many people attending on the live line as well as many
5 listening in. I will ask each of you when you speak to
6 identify yourself and your client. I may ask you to do that
7 again later in oral argument if I believe that the court
8 reporter may have difficulty identifying you from the
9 official record of this set of hearings which is being taken
10 by Court Solutions. That raises one other point. That's
11 the only recording of this telephonic conference that should
12 be taken. No other recordings are permitted.

13 So with that introduction, I have the agenda for
14 today's omnibus hearing in In re Purdue Pharma, L.P., et
15 al., and I'm happy to go down the agenda.

16 MR. HUEBNER: Perfect. Your Honor, can you hear
17 me clearly?

18 THE COURT: Yes, I can. I hope you all could hear
19 me clearly as well. I'm sorry I'm late. I had a little
20 difficulty getting on. For some reason they sent me right
21 into the dashboard without the phone number so -- anyway, I
22 apologize for being late.

23 MR. HUEBNER: No worries. We can hear you
24 terrifically well.

25 THE COURT: Okay.

1 MR. HUEBNER: So let me begin by noting that I
2 very much hope that everyone in their various venues is safe
3 and well and healthy with their families in these continuing
4 unprecedented times. Your Honor, there's not really much of
5 a status report because, frankly, I think we're all
6 attending to lots of thing, including Purdue. While many
7 things are going on including the mediation which is
8 proceeding apace, there's not really a lot of
9 (indiscernible) agenda items I think are useful to discuss.

10 There one exception which is, we wanted to give
11 the Court an update on the ERF in light of (indiscernible)
12 chambers conference a couple weeks ago and since -- as a
13 very strong sign of just how passionately everyone feels
14 about every single aspect of the ERF, even the seven
15 sentences that I'm about to, quote, read, close quote, were
16 scripted and signed off on and commented on by multiple
17 parties and I think people are even printing them out and
18 are following along to make sure that I know how to read.
19 So that's -- sort of res ipsa loquitur.

20 So here is the update. After the chambers
21 conference with Your Honor on March 30th, the Debtors, the
22 creditors committee, the consenting ad hoc committee, and
23 the non-consenting state's group took Your Honor's guidance
24 to heart and went back to work on the ERF. The parties
25 exchanged further proposals in good faith in an attempt to

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1 be responsive to Your Honor's comments. Ultimately, comma,
2 the Debtors, creditors committee, consenting ad hoc
3 committee and non-consenting states collectively concluded
4 that despite the best intentions on all sides, pursuit of an
5 ERF should be paused temporarily while we allow planned
6 mediation to progress. The creditors in this case continue
7 to have deeply-held fundamental differences in view as to,
8 among other things, the optimal use of ERF funds and
9 appropriate governance and it has become clear that
10 attempting to resolve those differences while parties are
11 focused on planned mediation was placing additional strain
12 on that intense, complex, and important process.

13 All parties believe that an ERF is more likely to
14 be successful after additional progress has been made in
15 planned mediation. To be clear, while we are pausing
16 consideration of an ERF at this time, it is not cancelled
17 and all parties have agreed to revisit it once planned
18 mediation has progressed further. All parties hope to be
19 back to Your Honor in the future with an ERF.

20 So that is the ERF update. I guess since it is,
21 obviously, cross-refenced to mediation, I should note that
22 the mediators do continue to be quite hard at work. There
23 are multiple calls, multiple sessions, multiple video calls
24 going on with a wide variety parties many times a week, and
25 they're, you know, asking lot of excellent questions of

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1 people and I won't say anything more than that, because
2 obviously it's a conflict to mediation, but we do want Your
3 Honor to, you know, be comfortable that the mediators are, I
4 think, quite fully engaged and I think the parties in the
5 case are quite fully engaged with the mediators.

6 So with that unusually brief case update let me
7 turn as Your Honor had said to the agenda letter. Pod
8 number one -- the hearing obviously as the Court knows is
9 utterly uncontested with a single exception that we'll deal
10 with at the end which is the lift stay motion --

11 THE COURT: Mr. Huebner, you cut out. Mr.
12 Huebner? Hello?

13 MR. TROOP: Your Honor -- it's -- Your Honor, this
14 is Andrew Troop. I don't know if Mr. Huebner is having the
15 same issue as I am.

16 THE COURT: I -- I could not hear him. I can now
17 hear you. Mr. Huebner, are you able to hear me?

18 MR. TROOP: Your Honor, for some reason, the
19 website -- at least for me, the dashboard kicked it as --
20 kicked itself off and now when I'm talking to you it seems
21 to automatically be trying to mute me.

22 THE COURT: Yes. It's doing the same thing to me
23 as well and I think it may have done the same to Mr.
24 Huebner. You know, I've been using this product for about
25 two --

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1 MR. TROOP: Okay. Hold on. Your Honor, can you
2 hear me? It just said, unmuted by judge so I'm not sure if
3 --

4 THE COURT: Yeah.

5 MR. TROOP: -- maybe the Court accidentally --

6 THE COURT: No. There was something wrong with my
7 line. It kept muting me so maybe it was muting you also and
8 it was muting Mr. -- well, it was muting other people, too,
9 who were trying to speak. I was saying, I've been able to
10 use this -- hello. Can anyone hear me?

11 MR. TROOP: Yeah, you sound --

12 THE COURT: What is going on?

13 MR. TROOP: We can all hear you.

14 THE COURT: Okay. Very well. There was a period
15 where I could not hear you and I could not hear Mr. Troop
16 either. I was about to say I've been using this Court
17 Solutions system now for about ten days and this is the
18 first time I've had a problem with it. Someone from the
19 clerk's office is on the phone. I just -- I want to ask
20 him. (Indiscernible) is there -- what's going on with this?
21 Do you know?

22 CLERK: I'm not too sure exactly what is going on.
23 We're trying to get in touch with (indiscernible) right now.

24 THE COURT: Okay. It's --

25 CLERK: I will keep --

Page 21

1 MR. HUEBNER: So, Your Honor, I just --

2 THE COURT: It's working now so -- but I would
3 like -- (indiscernible), if you could get ahold of the Court
4 Solutions people just to make sure they're on top of this.
5 In the meantime, we'll try to proceed with the hearing.

6 MR. HUEBNER: Yeah. So Your Honor, I just texted
7 the CEO of the company in the background who is now
8 personally jumping in to monitor it and make sure we don't
9 have any further difficulties during the call and --

10 THE COURT: Very well,

11 MR. HUEBNER: -- he'll check into the problem of
12 your line so I have (indiscernible).

13 THE COURT: Okay. So when you cut out, Mr.
14 Huebner, you were -- you had finished your reading of the
15 statement on the emergency relief fund and I don't have any
16 further questions or comments on that. What I stated, that
17 the parties --

18 MR. HUEBNER: So what I did right after that, Your
19 Honor --

20 THE COURT: Yeah. You also stated the parties are
21 heavily involved still in the mediation and my only comment
22 on that is I'm glad to hear that and I'm grateful to the
23 parties and the mediators for continuing to do that, I'm
24 assuming telephonically, but still on an active basis. And
25 then you were going to proceed into the agenda at this

1 point.

2 MR. HUEBNER: Yeah. And Your Honor, we're --
3 they're actually doing a lot of the mediations when the
4 Debtor's being done by video which is actually proving, at
5 least from our perspective, pretty effective -- you know,
6 the little boxes where you can actually see everybody and
7 make eye contact and all that. But it actually is, I think,
8 working better than many us, you know, somewhat older folks
9 might have imagined.

10 So Your Honor, that does take us to the agenda
11 letter. And so the first item is the bevy of quarterly fee
12 applications --

13 AUTOMATED VOICE: The judge has left the call. If
14 this was an accident or you were instructed by the judge to
15 rejoin the call, please call back. Thank you for using
16 Court Solutions. Goodbye.

17 AUTOMATED: Welcome. Please enter your six-digit
18 -- thank you. Your personal identification number has been
19 accepted. Welcome to your telephonic courtroom. Your line
20 is live. To access the Court Solutions advanced call
21 features, go to Court-Solutions.com and open the hearing
22 dashboard. You are entering the courtroom. Unmuted.

23 THE COURT: -- go back for this first one. The
24 examiner will be dealing with these on a going-forward basis
25 and it may be that -- on a going-forward basis, such a

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1 holdback isn't warranted for subsequent applications or a
2 lesser holdback but I'm not comfortable just having all the
3 money go out the door at this point.

4 On this -- on the more specific point, the
5 following firms appear to me be having a large number of
6 hours spent on employment and fee applications for
7 themselves. I understand that Debtor's main counsel and the
8 committee's main counsel incurs additional time in reviewing
9 other's fee applications and I'm not talking about that.
10 I'm talking about the -- one's own applications, and I'll
11 just list those firms. They should be focusing on why the
12 time is so much and whether it needs to. I will note that a
13 number of firms who are doing comparable work have far fewer
14 hours spent on fee and employment applications.

15 So the following firms seem to me to be billing
16 unusual amount of time on those matters. Dechert, King &
17 Spaulding, Davis Polk -- and again, this is on the firm's
18 own applications -- Jones Day, Skannon. I guess that's it.

19 And then one small point. It appears to me that
20 Kurtzman Carson may have duplicated a handful of expenses.
21 The aggregate amount of its expenses is slightly under
22 \$15,000 -- \$14,991.54. There are entries in the January
23 expense report that seems to include entries from a November
24 one and I think that should probably lead to the expenses
25 being reduced to \$10,416.74. If they can explain how those

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1 aren't duplicate entries that's fine, but at least from the
2 documents it appears that they're duplicate.

3 So with those caveats and the only one that would
4 be a reduction would be the Kurtzman Carson one, I'll grant
5 each of the fee applications on an interim basis.

6 MR. HUEBNER: Thank you, Your Honor. And I
7 apologize, but to be clear, is the ruling that we can't have
8 any of the amounts -- the 20 percent from September to
9 (indiscernible)? It said, no incremental payment can be
10 made at all on any of the now-approved interim fee
11 applications or --

12 THE COURT: Right. There would be a 20 percent
13 holdback on the fees not the expenses.

14 MR. HUEBNER: Okay. I mean, just so you know, we
15 had actually talked about the potential of adjourning this
16 hearing for one more omnibus to let the fee examiner get up
17 to speed on them and I think the decision was made and they
18 were comfortable that they would review these in the context
19 of the next batch, you know, given that --

20 THE COURT: Right.

21 MR. HUEBNER: -- these go all the way back to
22 September and we're already at almost May, it's a little bit
23 -- respectfully, I think it's a little bit tough to ask
24 people to deal with a -- because by the time we're at our
25 next quarterly fee app, you know, we'll be moving towards a

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1 year in this case and an addition, as the Court of course
2 knows from internal account procedures, there's a quite long
3 delay already between sort of you billing time and getting
4 paid the first 80 percent. So I just -- you know, I guess
5 on behalf of everybody -- and I apologize for sort billing
6 into the peak of the buzz saw a little bit -- it is a little
7 bit difficult to contemplate having to go eight, nine, ten,
8 eleven months into a case and unlike every other
9 administrative creditor in the case, virtually all of who
10 are being paid currently or immediately, to be looking at,
11 you know, waiting potentially close to a year to get the
12 last 20 percent of quite material amounts for some of us.

13 THE COURT: Well, again, I'm just not comfortable
14 doing it without the -- I mean, that's why I appointed the
15 fee examiner.

16 MR. HUEBNER: Okay.

17 THE COURT: I've been through them but that's
18 where I'm coming out on this. So --

19 MR. HUEBNER: Okay. What we'll do is, if it's
20 okay with the Court is, we'll coordinate with the fee
21 examiners and see sort of what would make sense for them to
22 be able to go through these and get up to speed and then
23 obviously engage in the process contemplated. And I assume
24 it would not be -- I -- would request that it not be --
25 would it be okay with the Court if in a month or two the fee

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1 examiner was ready and had views on some or all these we
2 could come up with a mechanic where getting your approved
3 reductions or approval of the holdback amount done before
4 the next quarterly application is because that's not for
5 quite a while?

6 THE COURT: That's probably fair, although the --
7 isn't it -- I mean, in a couple months then -- you're just
8 talking about two months -- but if the examiners able to do
9 that that's fine.

10 MR. HUEBNER: Okay. We'll figure something out.
11 Okay. So that's probably enough on fees and --

12 THE COURT: As far as the order is concerned,
13 there are three groups of professionals -- eleven Debtor
14 professionals, five committee professionals, and five ad hoc
15 committee professionals -- I could do one order with
16 schedules A and B covering everybody or I can do three.
17 It's really up to you all but -- you can just coordinate and
18 make sure that counsel for the committee and the ad hoc
19 committee know which order is being submitted and -- so they
20 know whether I need to prepare for their own group of
21 professionals or not.

22 MR. HUEBNER: Yeah. So well, in general, to save
23 everybody time and money, I think we often take the
24 (indiscernible) omnibus orders to cover this and we've
25 already been doing that and so we'll probably just submit an

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1 omnibus order that includes deletion of the authority to pay
2 the holdback amount and we'll see if KCC was able to resolve
3 and reduce the amount portioned from approval sought and by
4 the expense questions raised by Your Honor and if we can,
5 we'll wrap it all into an order and tie it up with a bow and
6 send it over.

7 THE COURT: Okay. Very well. That's fine. Thank
8 you.

9 MR. HUEBNER: Terrific. Your Honor, the second
10 matter is the Cole Scholz. It's technically a committee
11 matter but for the sake of the --

12 THE COURT: Right.

13 MR. HUEBNER: -- easy flow, Mr. Price said that
14 unless the Court had questions I could just note that that
15 was next up on the agenda. Obviously, you know, the lawyer
16 team that the committee wants to work with switched firms.

17 THE COURT: Right.

18 MR. HUEBNER: For efficiency counsel, it's just
19 moving it over. There were no objections. The Debtor
20 certainly has no objection. I (indiscernible) think we've
21 granted a waiver to allow the switch to take place and
22 that's all we have on number two.

23 THE COURT: All right. I don't have any questions
24 on that. The explanation is clear and I'm prepared to grant
25 that order so it can be emailed to me authorizing Cole

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1 Schotz retention in place of the Bayard firm.

2 MAN: Thank you, Your Honor.

3 MR. HUEBNER: Okay. So we're 1 for 17 so far.

4 It's going great. The last matter on the agenda -- because
5 obviously one matter was resolved and I already entered the
6 order which -- thank you. That saved us time from having to
7 talk about the settlement on the mediation cause and
8 participation. The last item is the lift stay motion and
9 since we are not the moving, I will turn it over to the
10 movings. I will note that in order to streamline the
11 hearing given the complexities of us all being in separate
12 spaces, those of us on the respondent's side had a call
13 (indiscernible) coordinated in what order we will address
14 the Court after the movants finish so, you know, that will
15 be smooth once it's time for us to respond.

16 So unless the Court has further questions on
17 anything else, I will turn it over to the movants for the
18 one contested matter on the agenda.

19 THE COURT: Okay. that's fine.

20 MR. GAGE: Your Honor, it's Robert Gage on behalf
21 of Allergan Finance and I'll address our -- the moving
22 papers first. We are one of the movants. I think others --
23 other defendant movants -- may also wish to speak.

24 As Your Honor knows, we're seeking very limited
25 relief here to allow the Debtor to be added to the verdict

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1 form in the New York litigation in state court in
2 centralized Islip where the plaintiffs are the New York
3 attorney general in Suffolk and Nassau Counties, and I would
4 just note at the outset that plaintiff's own pleadings of
5 course identify the Debtor as the taproot of the opioid
6 crisis among other things.

7 But Your Honor, the relief we seek or the order we
8 asked the Court to enter is supported by the language of the
9 statute, New York case law, and the equities here. As Your
10 Honor also knows the Debtors were originally a part of the
11 New York litigation. They obviously filed and they've been
12 severed so are no longer a party to that litigation and
13 pursuant to the plain language of the automatic stay, there
14 is no proceeding against them nor would adding them to the
15 verdict form constitute a proceeding against them.

16 New York law supports this conclusion also.
17 Justice Friedman, in the asbestos case that we've cited
18 among others, clearly states that New York law as set forth
19 in Gannon Personnel which is a decision from 1977, favors
20 inclusion of bankruptcy defendants on the verdict sheet.
21 It's interesting also, Your Honor, as a footnote in that
22 opinion at the beginning which says that the federal courts
23 that have been tried in the so-called (indiscernible) cases
24 also followed the approach or at least strongly suggest that
25 they follow the approach of including Debtors on verdict

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1 forms.

2 I won't go into all that case law in detail unless
3 Your Honor wants me to. It's cited in our brief. But I
4 think it's extremely clear from all reported New York
5 decisions that including the Debtor on the verdict form is
6 an accepted and appropriate practice.

7 I also, as our papers do, want to make clear that
8 by placing the Debtors on the verdict form that would not
9 impose any liability on the Debtors or create an
10 importonment finding which is binding on the Debtors. Put
11 simply, Your Honor, there would be no binding decision with
12 regard to the Debtors if they're placed on the verdict
13 forms.

14 Moving to the equities, Your Honor, the -- to
15 repeat because I think it's a critical point, really the
16 Debtors are at the epicenter or taproot of this opioid
17 crisis and that's per the plaintiff's pleading. So to
18 require the defendants to defend this case without the jury
19 having the benefit of a form that identifies the role of the
20 Debtors would really impose substantial and irreparable harm
21 on the defendants. It really would be a violation of
22 fundamental due process, at least vis-à-vis the defendants.
23 And I think, Your Honor, the pie chart analysis --

24 THE COURT: How is -- I'm sorry. I -- because of
25 the fact that this is a telephonic hearing and I can't get

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1 your attention without interrupting by phone, I've let you
2 go ahead but the last point really does require a question.
3 Where, if at all, do you argue due process and how does it
4 exist given that you're relying on a statutory provision
5 that was enacted only about 30 years ago? So how does due
6 process come into here at all?

7 MR. GAGE: Well, I'm using due process in the
8 sense, Your Honor, that it would prejudice -- the prejudice
9 that would arise from not including the Debtors on the
10 verdict form.

11 THE COURT: Okay. So it's really the equities.
12 It's another word for saying equity.

13 MR. GAGE: Yes, Your Honor. Yes.

14 THE COURT: Okay. All right. Go on -- I'm sorry.
15 I interrupted you but I just want to make sure we're not
16 going off on a tangent. So you can feel free to keep going.

17 MR. GAGE: Okay. Thank you, Your Honor. And as
18 our papers discuss, but I would want to highlight, the pie
19 chart analogy. If the Debtors are not on the verdict form,
20 the risk exists -- a very strong risk exists -- that the
21 portion of the pie chart so to speak that should be
22 allocable to the Debtors will get filled in by allocation to
23 the defendants. And so that really is among -- that's some
24 of the irreparable and substantial prejudice I'm talking
25 about and that we discuss in our papers.

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1 And alternatively, or I should say on the other
2 side, balance in the equities -- there really is limited
3 incremental impact on the Debtors and the settlement
4 discussion. I know there's speculation, particularly in the
5 Debtor's papers but others, about the impact including the
6 Debtors in the verdict form would have on the settlement
7 negotiations, but of course that's impossible to predict and
8 it's -- necessarily respect to it. We could discuss, if
9 it's helpful to Your Honor I'd be glad to, all the
10 possibilities here but the reality is -- and the practical
11 reality is -- if the Debtors are not on the verdict form,
12 there is the significant prejudice that we've been
13 discussing to the defendants.

14 On the other hand, because there is no binding
15 liability or decision of any sort with regard to the
16 Debtors, their inclusion on that form is limited -- highly
17 limited. And I think, you know, for the same reasons, Your
18 Honor, that I've outlined, if the -- we would urge the Court
19 find that the automatic stay does not extend to the Debtor's
20 inclusion on the verdict form, but if the Court were to
21 decide otherwise for the reasons discussed in our papers, we
22 would request relief from the automatic stay for good cause
23 for pretty much the same arguments we've been discussing.

24 That said, we strongly believe inclusion on the
25 verdict form -- again, per the language of the statute, the

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1 New York case law, and the equities supports an order -- a
2 conclusion that the Debtor's inclusion on the verdict form
3 is appropriate.

4 THE COURT: Okay.

5 MR. GAGE: I know there's discussion in the -- I
6 can stop I just -- the last thing I'd add is some brief
7 discussion about the preliminary injunction but we -- it's
8 effectively co-extensive for this purpose with the stay.
9 And I'm glad to answer any questions the Court may have.

10 THE COURT: All right. I do have a few questions.
11 The first is, what is the current status of the trial before
12 Justice -- is it Garguilo -- is that how it's pronounced?

13 MR. GAGE: Yes, Your Honor. And I think it is --
14 last week, as I understand it, it was designated an
15 essential matter by the court -- the New York Trial Court --
16 and therefore is moving forward on a -- briefs can now be
17 submitted and I think as to a trial date, that of course is
18 -- can only be determined when the health and safety issue
19 as a result of the COVID-19 is imposed. So we don't have a
20 specific trial date but again, the court last week
21 designated us as essential so I think the working assumption
22 is that we'll move forward, you know, as soon as the health
23 challenge is resolved.

24 THE COURT: Okay. And obviously the jury trial so
25 the Court would need to deal with jury assembly issues in

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1 light of the COVID-19 crisis. Do you have any insight as to
2 how that has been dealt with by the New York State Courts
3 with regard to jury trial?

4 MR. GAGE: Your Honor, I don't have any particular
5 insight. I've followed the various postings by southern
6 district courts and other federal courts in the area as well
7 as New York State Court. I just don't think there's any
8 clear path forward. This isn't immediately responsive to
9 Your Honor's question but to underscore, there's no absolute
10 roadmap here. I mean, Judge McMann -- she's a judge from
11 the southern district issued a new order yesterday which,
12 you know -- the full impact of which I think we're all
13 digesting. So the short answer is, Your Honor, no. There's
14 no clear path to seating a jury.

15 THE COURT: Okay. All right. Your reply attached
16 a ruling by Justice Garguilo on a summary judgment or a
17 partial summary judgment issue, quote, on the issue of
18 whether joint and several liability, as opposed to several
19 liability will applicable to the prosecution and defense of
20 the public nuisance claims in which, as I read it, that
21 issue was reserved to trial.

22 I don't see a ruling as to whether -- well, first,
23 I don't see whether there was a motion but I also don't see
24 a ruling as to whether New York CPLR 1601 applies to the
25 claims that are to be tried. Was there such a ruling?

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1 MR. GAGE: My understanding, Your Honor, is that
2 the issue of apportionment has not yet been decided -- fully
3 presented -- hasn't been fully presented or really presented
4 or decided by the trial court but that the trial court would
5 be making that decision. But that's all, Your Honor. I
6 think we're in the process -- parties are -- preparing a
7 verdict form that -- the reasons we've been discussing, we
8 strong believe should include the Debtors.

9 THE COURT: All right. But the -- New York CPLR
10 1601 applies specifically to decisions that an action or
11 claim for personal injury and where the liability is such
12 defendant for non-economic loss shall not exceed, you know,
13 et cetera, et cetera, as provided in the statute.

14 I just want to make sure that no court has dealt
15 with, at this point in the pending litigation, the issue as
16 to whether the pending litigation is in respect of a claim
17 for personal injury where you're dealing with non-economic
18 loss. Have those issues been raised at this point?

19 MR. GAGE: I -- let -- I think -- yeah, no. Can
20 Your Honor hear me?

21 THE COURT: Yes, I can.

22 MR. GAGE: Okay. I'm sorry. Something popped up
23 on the website. I think, Your Honor, I just -- I don't have
24 sufficient command of the complete record and I'd be most
25 comfortable if that's -- if we could come back to that issue

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1 in writing or otherwise with the Court. What I generally do
2 understand is that the issue of apportionment -- and I'm
3 sorry for repeating myself a bit, Your Honor -- has not yet
4 been presented to the trial court and that the trial court
5 anticipates deciding that issue. But with regard to the
6 specific question Your Honor's asked, I'd want to go back
7 and check the record and make sure my response is accurate.

8 THE COURT: Well, is there any other basis for
9 apportionment where the debtor would be covered by the jury
10 form other than 1601?

11 MR. GAGE: Well, I believe so, Your Honor, in the
12 sense that it's not -- and pardon me, again, for repeating a
13 bit -- it's not prohibited by the language of the automatic
14 stay, so that --

15 THE COURT: No, no, I'm not talking about that.
16 I'm talking about what would be before the New York Court.
17 Is there any other basis for apportionment? There's been so
18 settlements here, so the general obligations law wouldn't
19 apply. And 1601 has been described subject to exception, as
20 an exception to the general rule where you don't apportion
21 against non-present, with respect to non-present parties.

22 So I'm just -- I want to make sure that I'm not
23 stepping on the New York Court's toes, whether the New York
24 Court has ruled or not on this issue already. And secondly,
25 I want to make sure that I'm not really being asked to give

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1 an advisory opinion on an area of the law that it is
2 somewhat uncertain.

3 MR. GAGE: Well, I --

4 THE COURT: So if it's something more than 1601
5 that you'd have a jury form, I ought to know that because as
6 far as the language of 1601 is concerned, I'm having a hard
7 time seeing how it would apply in this particular
8 litigation.

9 MR. GAGE: Well, Your Honor, just generally
10 speaking, we certainly are not asking the Court to -- and I
11 appreciate the Court's concern. We're certainly not asking
12 for an advisory opinion. It really is a very narrow issue
13 of inclusion on the jury verdict form that we're asking the
14 Court to order is not covered by the automatic stay.

15 THE COURT: But you wouldn't -- but I'm sorry.
16 You wouldn't include it on the jury form if there was no
17 legal basis for apportionment, and I'm trying to figure out
18 what the legal basis for apportionment is here other than
19 1601 of the CPLR.

20 MR. GAGE: Well, I think -- and maybe this is
21 something we should respond to Your Honor in writing to give
22 a more full response. But I think here, in part, it gets
23 back to equitable arguments and part to New York case law.
24 But equitable arguments that if the debtors who are at the
25 epicenter cap route of the opioid allegations -- and again,

1 that as Your Honor knows, per the Plaintiffs' pleadings --
2 are not on that verdict form, then we will have a situation
3 where extreme prejudice could result to the Defendants
4 because they could -- the jury could allocate fault, which
5 was caused by the debtors, to allocation fault caused by the
6 debtors improperly, wrongly to the Defendants.

7 THE COURT: But do those -- but lawyers could
8 argue equity all day, and there are equities on the other
9 side which have been raised, including by the ad hoc
10 committee of non-consenting states, one of which is -- one
11 member of which is New York State, one of the Plaintiffs in
12 the litigation. But the issue is whether as a legal basis
13 there's any basis for apportionment recognized by the Courts
14 or a statute here, other than under New York CPLR 1601.

15 MR. GAGE: I guess, Your Honor, my reaction --
16 and, again, if a letter submission to the Court would be
17 helpful, glad to do it. But my reaction is, understanding
18 the posture of the case is, a apportionment is an issue that
19 will be decided, will ultimately be presented and decided by
20 the trial court. And so, it's really not necessary for Your
21 Honor to make that determination.

22 The only issue that we've presented to the Court
23 is the -- and wanted to be respectful of the bankruptcy
24 process, of course, is does the automatic stay bar, the
25 addition of the debtors to the verdict form; just that very

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1 narrow issue. Then it will be up to the trial judge to
2 decide, you know, whether or not that's appropriate under
3 New York law.

4 So I guess, again at the risk of briefly repeating
5 myself, I think that will be an issue for the trial court,
6 Your Honor. The relief we ask from Your Honor or the order
7 we ask from Your Honor is much more narrow. It certainly
8 does not in any way, shape, or form ask Your Honor to weigh
9 in on, so to speak, the apportionment issue and what bases
10 there would be under New York law for apportionment.

11 THE COURT: All right. So you've referenced that
12 this is only to put on a jury form the issue of the debtors'
13 palatable share of any liability that is found here
14 ultimately. But how is the jury to decide that issue; how
15 is that case made?

16 MR. GAGE: Well, I would say, first of all, Your
17 Honor, in the way that it's been made in New York Courts, as
18 noted by reported decisions at least as far back as 1977.
19 And I think ultimately, the manner in which that's done, the
20 management, so to speak, at the trial will again be decided
21 by the trial court.

22 But one thing is clear, I think, that I believe
23 goes to the essence of what Your Honor's asking, is
24 obviously the debtors will not be participating as a party;
25 they've been severed, to state perhaps the obvious. But

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1 significantly for the purposes of the limited relief we
2 seek, Your Honor, there's no -- there will be no binding
3 decision by the jury with regard to the debtors.

4 THE COURT: So, but I guess the point I'm making
5 though is during the trial, I'm assuming one element of the
6 trial or one portion of the trial would consist of the
7 submission of evidence by the Defendants to the effect that
8 if they are liable for anything, the main liability under
9 public nuisance causes of action or a substantial amount and
10 then they'd have to introduce evidence as to what that
11 substantial amount would be, would be attributable to the
12 debtors. All right?

13 Appreciate that it is unlikely that the debtors
14 would be participating because they wouldn't want to incur
15 the cost of doing that. So are you basically then -- the
16 only other parties that would be participating would be the
17 Plaintiffs, correct?

18 MR. GAGE: I believe so, Your Honor, yes.

19 THE COURT: Who would be arguing -- who would be
20 arguing that really your side has more liability, right,
21 than you are asserting.

22 MR. GAGE: And I leave to them to make the
23 arguments. But, hypothetically, I would assume, yes, that
24 would be the argument they'd make.

25 THE COURT: Okay. And at the same time, the

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1 Plaintiffs are stayed by my order and/or the automatic stay
2 from pursuing the debtors, correct?

3 MR. GAGE: That's right.

4 THE COURT: Okay.

5 MR. GAGE: And then I think that's for the
6 severance by -- yes. (audio distortion)

7 THE COURT: Have you identified any case where
8 this issue has been addressed where the debtor was an entity
9 that had a substantial amount of value, as opposed to a
10 Chapter 7 debtor that was either already liquidated or out
11 of business or where its creditors would receive next to
12 nothing?

13 MR. GAGE: I'm not certain there's any case
14 precisely on point, particularly with the, you know, with
15 the caveat the Court added at the end, I mean, a case
16 absolutely on all fours. But I do think, Your Honor, the
17 Gannon Personnel case from 1977 and Justice Friedman's case,
18 which is a very thoughtful decision in 1991 in the asbestos
19 litigation, and the other case law we cite really speak to
20 the notion that under New York practice, a debtor who is not
21 participating in the trial itself can be included on a
22 verdict form.

23 And I think I mentioned earlier Justice Friedman's
24 first footnote in the asbestos litigation. It strongly
25 suggests that this is a practice that has been followed not

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1 only in New York State Courts, but in the Federal Courts
2 that were handling some of the larger aspects of the
3 asbestos litigation, which obviously goes back a number of
4 years.

5 So how exactly it gets managed is to the trial
6 court. Certainly, it's defendants here and, of course, I
7 would agree evidence would be presented is a fact that the
8 debtors are, as the Plaintiffs contend, the taproot here.
9 But I think it's been done since at least 1977, and because
10 there's no actual prejudice of any sort to the debtors here,
11 they'll be no binding decision of any sort with regard to
12 them, I think they are appropriately on the verdict form.

13 Again, I can't speak to the specifics going back
14 to 1977. But, Your Honor, as you trace the case law
15 through, one thing is clear is that this is not a unique
16 request; this has been a practice going back to the '70s.

17 THE COURT: Albeit that it's never really been
18 litigated, right --

19 MR. GAGE: Well --

20 THE COURT: -- in the handful of cases that have
21 come up that include the (indiscernible) case, as well as
22 the Brooklyn Navy Yard Second Circuit case, but never really
23 in the context of someone opposing from the debtors' side,
24 the apportionment.

25 MR. GAGE: Well, Your Honor, I have to say I'm

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1 going to go back to Justice Friedman's language again. I
2 mean, I appeared before her a number of times when she was
3 on the bench and, of course, ultimately to the First
4 Department, as Your Honor knows, a very thoughtful court.
5 And in a somewhat lengthy decision, nothing -- again,
6 there's no absolute case that's absolutely on all fours.
7 But Justice Friedman does say very clearly: New York law, as
8 set forth in Gannon -- I won't read the entire cite -- New
9 York law, as set forth in Gannon favors inclusion of
10 bankrupt defendants on the verdict sheet. And I think that
11 basic statement of New York law is not only correct but has
12 been relied upon going forward by New York Courts. And so,
13 that --

14 THE COURT: But that's not -- but, again, that's
15 not a stay litigation context. No one in that case said, no
16 -- from the debtors' point of view -- no, don't do that,
17 that will mess up our reorganization.

18 MR. GAGE: That may not have been the precise
19 context, Your Honor, but I think the clear principle of that
20 case does apply to our case. I think they're -- I keep --
21 again, pardon me for repeating myself. But here, it's so
22 critical and I think it's what does bring in Justice
23 Friedman's and the other reported decisions, is because
24 including the debtors here on that verdict form will impose
25 no binding liability or obligations on them or even a

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1 binding apportionment on them, the debtors, the law that
2 we've been discussing is applicable here, the principles of
3 law.

4 THE COURT: All right, but that's not determined
5 by any of those cases. You're just interpreting Section
6 362, right?

7 MR. GAGE: Yes, Your Honor, and critically. To be
8 clear, it's not decided -- the facts are not absolutely on
9 all fours; that is true. But at 362 requires a proceeding
10 for the stay to apply to be against the debtor, including on
11 a verdict form, and this I do draw from all the cases we've
12 been discussing in our papers. Inclusion on a verdict form
13 is not a proceeding against the debtor because, again (audio
14 distortion) --

15 THE COURT: Well, you're looking at 362(a)(1),
16 right?

17 MR. GAGE: I am.

18 THE COURT: And not (a)(3), to exercise control
19 over property of the estate.

20 MR. GAGE: Well, that's why I keep coming back to
21 the binding, Your Honor. I don't think inclusion on the
22 verdict form there will, in any way, seek -- it will not
23 seek to take any property of the debtor, because again --

24 THE COURT: Well, it's not taking. It says
25 exercise control. And if that doesn't have independent

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1 meaning, then Congress would have just stopped at (1) or (2)
2 of 362(a).

3 MR. GAGE: Well, I would say, Your Honor, I don't
4 -- and, pardon me, I have it in front of me right now,
5 already so much on this screen -- but is I don't think it
6 will exercise control because, again, it would not be
7 binding in any way against the debtors.

8 THE COURT: Well --

9 MR. GAGE: There's no control being exercised over
10 their property.

11 THE COURT: The argument that the debtors and
12 their creditors are making is that it does control property
13 of the estate because it forces either the debtor to, in the
14 facts of these cases play a role in that case in the New
15 York Supreme Court case, or it -- let me finish.

16 MR. GAGE: Yes.

17 THE COURT: Or it affects the ongoing conduct of
18 this case, which is in the critical stages of mediation,
19 including with the plaintiffs in your case who, as we just
20 went through I think, would be -- if the debtors didn't take
21 a position in the New York case, would have to take a
22 position on the allocation issue that will affect the
23 negotiations in this case.

24 Now, at the beginning of this hearing, the
25 debtors' counsel read out a several line statement on a

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1 fairly -- well, a fairly important issue in this case, but
2 certainly not as important as the overall issue of the
3 allocation of claims against the debtors by states like the
4 Plaintiffs in this litigation and other parties and the
5 public nuisance theory general and Purdue's role in it. And
6 if it took the, I gather, multiple groups of lawyers billing
7 over \$1,000 an hour to come up with that four-line
8 statement, you can imagine the effect on the debtors' estate
9 on proceeding with this litigation with the allocation in
10 it, I would think.

11 MR. GAGE: Well, Your Honor, a couple of things
12 reacting to the Court's second point. Having -- and, of
13 course, note to mediations or settlement efforts are the
14 same. But having been involved in complicated multiparty
15 mediations and settlement conferences led by very fine
16 mediators, obviously without naming case or cases, it's very
17 -- as Your Honor knows, but I think it's important to say --
18 it's very important to predict how or why a mediation or
19 settlement conference will go in the direction that it does.
20 Here, a mediation obviously and with multiple parties.

21 So I think when you balance, what I would say just
22 based on my own experience but I think it's correct, the
23 unpredictability of charting how a mediation is going to go
24 and the incremental impact that inclusion on a verdict form
25 in the New York litigation in Central Islip. I just think

1 because of the unpredictability of where a settlement is
2 going to go, what will impact it, balanced against the clear
3 prejudice and immediate prejudice it will have on the
4 defendants in the upcoming trial.

5 I think -- so I would say, number one, I'm not
6 certain it will have such a -- it's very difficult to
7 predict what, if any, impact inclusion on the jury verdict
8 form will have on the settlement proceeding. And also,
9 given the unpredictability of that when you balance the
10 equities -- again, I find myself repeating just a bit, Your
11 Honor, I apologize -- layered against, balanced against the
12 very real and immediate harm prejudice it will have to the
13 defendants before the New York Trial Court, I think the
14 limited relief we seek here is appropriate.

15 I appreciate Your Honor wanting to do (crosstalk).

16 THE COURT: I apologize myself for repeating too.
17 But the mediation is going on right now. The trial in New
18 York State Court will occur sometime in the future that we
19 cannot predict, given that we cannot predict even when
20 people are supposed to stop social distancing. Secondly,
21 the only statute that I've been told applies, so far at
22 least, to me, doesn't appear to apply in at least two ways
23 and has not been ruled on as to whether it applies or not by
24 the New York State Court.

25 So it's hard for me to see how there's any

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1 immediate prejudice on getting what I believe is an advisory
2 ruling from me as to whether something should be included on
3 a jury form when it might well be the case that that would
4 be an either premature or completely unnecessary ruling.

5 MR. GAGE: Well, I think --

6 THE COURT: And, again, the reasons that it would
7 not apply is how is a public nuisance action an action for
8 personal injury. And, two -- and we haven't even discussed
9 this yet -- there appears to me to be a conflict in the case
10 law not yet decided by New York's highest court, but decided
11 by the highest court over me, the Second Circuit, that an
12 inability to sue Purdue because of the automatic stay
13 exempts the applicability of Section 1601 because of the
14 proviso that says, "The claimant provides that with due
15 diligence he or she was unable to obtain jurisdiction over
16 such person."

17 Now, I appreciate that the Appellate Division, two
18 different departments, has ruled contrary to the Second
19 Circuit in the Brooklyn Navy Yard case, that you can get
20 personal jurisdiction under this, even if the stay prevents
21 you from actually using it, but the leading case on that
22 point says it's just inequitable. And, frankly, I don't
23 believe the equities that that Court was considering where
24 the debtor could care less applies here where the debtor
25 could not care more about being dragged into the litigation.

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1 So it seems to me you're asking me to issue a
2 ruling that has serious consequences, both at the Second
3 Circuit level and the New York Court of Appeals level, at a
4 time when it's not really necessary. Now, I appreciate that
5 when you made this motion, you believed you were getting
6 full steam up to trial, but it's just not the case now.

7 MR. GAGE: Well, I hear you, Your Honor. I would
8 say a couple of things. We are absolutely not asking Your
9 Honor for an advisory opinion. We're only asking for an
10 opinion or decision on the very narrow issue. And secondly,
11 with regard to the apportionment issue, you know, as we've
12 been discussing, Your Honor, that we believe is an issue
13 solely for the New York Trial Court, which is another way of
14 saying we're not looking for an advisory opinion.

15 What I can share with Your Honor in terms of the
16 timing is what I have, but just the New York Trial Court has
17 deemed this case essential. But, of course, Your Honor is
18 correct and as we've been discussing, no one can predict the
19 path and health consequences of this virus. I think one
20 reason that we did think the limited relief we're seeking
21 would -- is appropriate at this time is that it frees up the
22 trial court then to make a decision on apportionment, you
23 know, when things commence, which again is where -- we don't
24 think -- we strongly believe that the decision is
25 appropriately made. So it's (crosstalk).

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1 THE COURT: Let me ask you another question as far
2 as being dragged into litigation is concerned; that is
3 (a)(1) and (a)(2) of Section 362. The Appellate Division in
4 the Kharmah v. Metro Chiropractic, basically said, well,
5 it's inequitable to prevent apportionment by ruling as the
6 Second Circuit did in the Brooklyn Navy Yard case, that the
7 stay prevents there being jurisdiction.

8 I don't believe that the debtor in the Kharmah
9 case appeared or cared. But, here, the debtor says, well,
10 it would be inequitable to us because we have just spent a
11 lot of time and money getting a nationwide injunction,
12 including of New York State, to the extent the stay doesn't
13 apply and 362(b)'s governmental exception would apply. And
14 now, the state is not allowed to sue Purdue in the opioid
15 litigation, but it has to deal with the apportionment issue.

16 So someone has to argue that equity's point to the
17 New York State Court, which no one cared to do in the
18 Kharmah case, which is then cited by the court in the
19 Tancredi case, then everyone else is just binding precedent.

20 But secondly, how does one get jurisdiction,
21 personal jurisdiction over the Plaintiff. I'm sorry, excuse
22 me. How does the Plaintiff get personal jurisdiction over
23 Purdue or could get personal jurisdiction if the automatic
24 stay and my injunction were to prevent them from doing it?

25 MR. GAGE: I --

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1 THE COURT: To me, that seems to be a legitimate
2 question that the New York Court of Appeals can rule on. It
3 seemed pretty clear to the Second Circuit in Brooklyn Navy
4 Yard. It also seemed pretty clear to Judge Keenan in
5 Schmelzer v. Hilton Hotels Corp., 2007 U.S. Dist. LEXUS
6 70722 (S.D.N.Y. Sept. 24, 2007), that the proviso regarding
7 jurisdiction in Section 1601 really has teeth in it in the
8 bankruptcy context because the stay prevents you from
9 serving Purdue. So how could you get personal jurisdiction?
10 It just says jurisdiction.

11 So I appreciate that the Appellate Division First
12 Department has ruled that that language, jurisdiction,
13 doesn't apply to a debtor or the Plaintiff is barred from
14 the automatic stay from serving the debtor, but it did so
15 saying it was unfair. And in the Tancredi case, which is
16 basically a two-paragraph opinion, it just cites Kharmah and
17 the other cases where, again, I don't believe any debtor
18 opposed this, and normally, a debtor wouldn't.

19 But one can argue that, here, the debtor would
20 have to oppose it basically to raise the same issues that I
21 am raising now and saying this is unfair if I said the stay
22 didn't apply. They would have to go into the State Court
23 and say this is unfair, this is inequitable. Even leaving
24 aside (a)(3), I don't see how that doesn't implicate (a)(1)
25 and (a)(2).

1 And I guess that's one reason why I'm having a
2 hard time seeing why this is even ripe for a decision given
3 those difficult issues. And you're asking me to intrude on
4 or make a decision that also affects the State Court in a
5 context where it may not matter because this isn't a
6 personal injury lawsuit.

7 MR. JONES: Your Honor, this is Evan Jones from
8 O'Melveny & Myers. At an appropriate time, I would be asked
9 to be heard on the questions Your Honor has posed.

10 THE COURT: Okay, why don't we do that.

11 MR. JONES: Thank you, Your Honor. Your Honor,
12 Evan Jones on behalf of, I'll just refer to them as the
13 Janssen defendants. We're identified in the papers. We are
14 movants.

15 Your Honor, to start, I want to apologize. The
16 phone system kicked me off just as Your Honor was inquiring
17 of Mr. Gage about due process. And, unfortunately, I didn't
18 get back in until the end of the discussion on Section 1601,
19 so I will start by apologizing if I cover matters that have
20 already been covered while I was excluded from the call.
21 But, obviously, Your Honor, this is a very important matter
22 and so, if I repeat things that Mr. Gage has said, I
23 certainly apologize.

24 Your Honor, I'll start by observing the request
25 that the movants make is not for this Court to rule on

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1 whether apportionment is appropriate. We simply ask this
2 Court to permit Justice Garguilo of the New York Court to
3 make a determination under New York law whether
4 apportionment is appropriate or not.

5 Your Honor asked a very specific question about
6 what the basis for apportionment might be, and Your Honor
7 referred to Section 1601 of the New York statute. Your
8 Honor is aware that just last week, Justice Garguilo -- and
9 I apologize, I'm probably mispronouncing his name. Just
10 last week, he entered an order denying a motion by the
11 plaintiffs to determine that apportionment was not
12 appropriate. Your Honor --

13 THE COURT: I'm sorry, you'll have to stop at that
14 point. Is this the order that's attached to the reply?

15 MR. JONES: Yes, Your Honor.

16 THE COURT: Okay. So that order deals with
17 whether a public nuisance claim gives rise to joint and
18 several or several liability. I don't see anything in here
19 about apportionment or 1601.

20 MR. JONES: Well, Your Honor --

21 THE COURT: And I don't know whether even the
22 issue of the applicability of 1601 applies. Was it briefed?

23 MR. JONES: Your Honor, it is my understanding
24 that --

25 THE COURT: (crosstalk).

1 MR. JONES: Your Honor, it is my understanding
2 that it was. I was not involved in that briefing. Your
3 Honor, I'm also told, though, in response --

4 THE COURT: What is the basis for your
5 understanding there? Have you seen the brief?

6 MR. JONES: No, Your Honor. I'm informed by my
7 colleagues who briefed the issue.

8 THE COURT: Has anyone passed the briefs for me?

9 MR. JONES: I don't believe anyone has, Your
10 Honor.

11 THE COURT: Okay. Do you believe that his ruling
12 addresses 1601 --

13 MR. JONES: Well, Your Honor, I thought by
14 answering --

15 THE COURT: -- as opposed to entering it joint and
16 several liability?

17 MR. JONES: Well, Your Honor, I'd respond by
18 answering a specific question that the Court asked, whether
19 1601 was the only basis in which apportionment might be
20 appropriate under New York law. And, in fact, we believe in
21 the New York asbestos case, the Court made clear that not
22 only 1601, but Section 1400 and general equitable principles
23 of New York law could permit such apportionment.

24 And, Your Honor, this is the point --

25 THE COURT: I'm sorry. Which asbestos case are

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1 you referring to? There's several.

2 MR. JONES: I'm sorry, Your Honor. The case is
3 the New York City Asbestos Litigation, 572 NY 2nd 1006.
4 But, Your Honor, this brings me back to the critical point
5 here. No one has brought before this Court by appropriate
6 motion, by adversary or any other way, other than response
7 to our motion, a request for this Court to determine what
8 New York law requires or permits in this aspect. And, Your
9 Honor, we'd submit that even if they had, that is an issue
10 that's appropriately before the New York Court and, Your
11 Honor, we believe Justice Garguilo is seized with that
12 question.

13 THE COURT: Then why are you asking me to give --
14 excuse me, just a minute. We have now spent an hour and a
15 half on this issue, all right. I am asking these questions
16 to know why we are spending time on it.

17 MR. JONES: Your Honor --

18 THE COURT: If you believe that this issue hasn't
19 been decided yet, and it may be decided in a way where your
20 side loses, why are you asking me to deal with it now?

21 MR. JONES: Your Honor, we're asking you to deal
22 with it now because we have great respect for the automatic
23 stay and we have a debtor and a bunch of Plaintiffs who are
24 arguing that our request to have this included on the jury
25 form violates the stay. And so, all we are asking for this

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1 Court to do is to declare that we are not forbidden by this
2 Court and its stay to make these arguments to the New York
3 Justice.

4 Your Honor, I also want to respond to a question
5 that the Court asked just before I was kicked off the call.
6 The Court asked Mr. Gage, do we believe it's a violation of
7 due process. And, Your Honor, we do. We think that even
8 though this is a statutory provision -- and by the way, as I
9 mentioned, it also arises under New York common law and
10 general equitable principles, we think it is a --

11 THE COURT: I'm sorry. Have you filed a brief on
12 this issue?

13 MR. JONES: Sorry, Your Honor. The issue, which
14 issue?

15 THE COURT: On the due process issue or New York
16 common law. Have you filed a brief on either of those
17 points?

18 MR. JONES: Your Honor, we have --

19 THE COURT: Either of those points.

20 MR. JONES: Your Honor, we have not filed a brief
21 that expressly delves into due process. Your Honor
22 inquired, we do believe that it would be a denial of due
23 process for us to be prevented from making arguments to the
24 New York court that are permitted, we believe, by New York
25 law.

1 THE COURT: And have you briefed that issue?

2 MR. JONES: We have not, Your Honor.

3 THE COURT: All right.

4 MR. JONES: Your Honor inquired of Mr. Gage.

5 THE COURT: So I think you are asking a lot of
6 this Court when I have contradictory opinions by the Second
7 Circuit and the Appellate Division to premise your arguments
8 on a right that you say you have. Now, I get it.

9 Ultimately, the state court might have to rule on that issue
10 and probably would rule on that issue if I lifted the stay.
11 But I think it's worthwhile for me in evaluating cause and
12 whether the stay applies in the first place to know whether
13 we're arguing about something that's totally moot or
14 unlikely to be decided in your favor.

15 So I'm going to adjourn this hearing and require
16 the parties who believe that their due process is being
17 violated somehow here to brief the issues that they haven't
18 briefed so far. I see no harm in doing that given that the
19 prospect of a trial here is remote at this point. So this
20 matter will be adjourned to the next omnibus hearing date,
21 and I expect briefing with case law on these points.

22 MR. JONES: Your Honor, Evan Jones again. I
23 understand the Court's ruling and we will certainly comply.
24 May I inquire when the next omnibus hearing will be?

25 THE COURT: I'm not sure. You should get that

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1 date from the debtors.

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: But your brief should be due 10 days
4 before that hearing, and the parties who have objected to
5 this motion can file something three days before the
6 hearing, either jointly or separately.

7 MR. JONES: Thank you, Your Honor.

8 THE COURT: Okay. Does anyone else have any
9 questions on this?

10 MR. GAGE: Your Honor, just -- can the Court hear
11 me? It's Robert Gage.

12 THE COURT: Yes.

13 MR. GAGE: I apol- -- I just want to say without -
14 - I understand what Your Honor just said. I don't have
15 anything to add. One brief point, but I just want to
16 apologize to the Court and others. It's not clear to me how
17 I got kicked off, so to speak, but I did, so my apologies.

18 THE COURT: I don't know. You know, I apologize
19 because we have not had any problems with Court Solutions
20 until today, but we've had plenty of problems today. In
21 fact, my dashboard is frozen today, so people can hear me,
22 but I cannot see from the dashboard who is speaking. I hope
23 the other parties are able to hear me. I can't really tell
24 because I can't see the dashboard and whether they're off.

25 Is counsel for the debtors able to hear me and

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1 respond?

2 MR. HUEBNER: Yes, Your Honor. We hear you loud
3 and clear and we have throughout the hearing. Other than
4 the one time that we were all thrown off, we'd actually
5 heard everybody consistently.

6 THE COURT: Okay, very well. Do you know, Mr.
7 Huebner, when the next omnibus date is?

8 MR. HUEBNER: I don't, Your Honor, but there are a
9 lot of people on the phone. They can email us if they can't
10 figure it out from the docket. We're obviously happy to let
11 everybody know.

12 MAN 1: It's May 21st.

13 THE COURT: Okay, very well. Thank you. All
14 right. Does anyone have any more questions? All right. So
15 as far as --

16 MR. GAGE: No, Your Honor, I just --

17 THE COURT: I --

18 MR. GAGE: I'm sorry. It's Robert --

19 THE COURT: No, go ahead, Mr. Gage.

20 MR. GAGE: Pardon me, Your Honor.

21 THE COURT: Go ahead.

22 MR. GAGE: I just wanted to clear that, yes, I
23 think Your Honor is correct. Was the due process argument
24 addressed directly head on in the papers? No. But I think
25 ultimately there is a due process issue here, and I do

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1 appreciate the Court allowing us to address it.

2 THE COURT: Okay. But, again, the context is
3 this: I don't see where there's a due process issue when the
4 fallback position for New York law, other than as modified
5 by statute, is against apportionment. So I think that's the
6 context I'm focusing on here. And secondly, whether there's
7 any other statute than 1601 that applies.

8 And then lastly, it appears to me that the issue
9 of control really has not been addressed, and frankly, you
10 can see where I'm coming out on that issue. If the debtor
11 is forced to argue the equities, it is being forced to argue
12 in another court. And the reason it's arguing the equities
13 in the other court is because of the adverse effect on its
14 bankruptcy case of proceeding here in a context where the
15 Plaintiff is not permitted to sue Perdue; and, yet, is put
16 to the task of dealing with apportionment with respect to
17 Purdue.

18 To me, that is something that most debtors don't
19 care about because, as in most cases including ones cited in
20 the briefing already, they're liquidated. They don't care.
21 They're not in plan negotiations. And so, it's someone else
22 who is raising the stay, as was the case in the Variable
23 Parameters case or the Adler v. Ng case. This is a very
24 different situation. The debtor is being, in essence,
25 forced back into a litigation, not in terms of its own

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1 liability but in terms of dealing with its primary
2 creditors, when it has already successfully enjoined those
3 primary creditors from participating in that litigation.

4 To me, that's a pretty telling equitable argument.
5 And if the First Department, without any real opposition by
6 a debtor, concluded that the equities favor the defendants,
7 I understand that because they didn't hear from the debtor.
8 But, here, they would and they would be forced to, so it's
9 hard for me to see how that doesn't implicate (a)(1) and
10 (a)(2), leaving aside (a)(3), which even if the debtor chose
11 not to appear, it would be affecting the conduct of this
12 case materially in terms of the dollars and sense involved,
13 which are high here. I just approved about \$30 million of
14 fee applications, most of which relate to negotiation of a
15 plan.

16 So that's my perspective on this and I, frankly,
17 am reluctant to rule on it on this record given that the
18 issue does not appear to me to be at all ripe on multiple
19 grounds, while --

20 MR. GAGE: Your Honor --

21 THE COURT: -- the case that mediation is going on
22 as we speak, so that's where we are at this point. All
23 right.

24 MR. NACHMAN: Your Honor, this is David Nachman
25 from the Attorney General's Office of New York, if I may

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1 just for a moment. There's an additional point of ripeness
2 or lack of ripeness that movants have not mentioned, which
3 is that the State Court has invited briefing on whether
4 there is a right to a jury trial in this action and has
5 received our papers, the Plaintiffs' papers on that subject
6 arguing that there is no jury trial right and asking for a
7 bench trial. And the movants here are going to be
8 responding to that, I believe, on the 27th with a reply
9 thereafter. So it's not at all clear that there will be a
10 jury trial in this matter at all.

11 THE COURT: Okay. Well, all right.

12 MR. GAGE: Your Honor, it's --

13 THE COURT: But separate from that point, have you
14 -- have people -- I mean, this is just a fact issue for me.
15 Was the applicability of 1601 briefed as part of the summary
16 judgment?

17 MR. GAGE: I don't think so, Your Honor. We moved
18 -- I don't think so. And I apologize, Your Honor --

19 THE COURT: Well, that's fine.

20 MR. GAGE: -- while we were on the Court Call, I
21 just want to say --

22 THE COURT: People can address that -- people
23 should address that before -- I mean, obviously if the Judge
24 has already decided that issue, I will look at his decision.
25 I think that's critical, but not deciding it. It's part of

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1 the facts that I need to consider that the likelihood of how
2 that would come out, not that I would decide it, but the
3 likelihood of how that issue would turn out.

4 MR. NACHMAN: I can say, Your Honor, that we have
5 consistently taken the position that this is an equitable
6 public nuisance action. It's neither a personal injury
7 action, nor an action for damages. It's an action for
8 abatement, and it could not, from our perspective, be more
9 unlike a 1601 covered action. We have made that point and
10 the Judge has reiterated that he sees joint and several
11 liability, including in the decision where he reserved for
12 trial, but made it quite clear that he subscribes to his
13 earlier pronouncements on that subject and then goes out of
14 his way in that decision to cite that principle.

15 THE COURT: Well, if anyone has any more clarity
16 for me as to what the Judge had before him, has before him,
17 has decided, has not decided on the applicability of Section
18 1601 or apportionment generally, I'd appreciate it. I'm
19 sorry, go ahead.

20 MR. GAGE: Your Honor, I appreciate the Court's,
21 you know, the time Your Honor has given us on this. I just
22 want to say I think we have a very different view on the
23 issue joint and several liability, but I'll just leave it at
24 that for now.

25 THE COURT: Well, no, that's clear.

1 MR. GAGE: Okay.

2 THE COURT: No one's being pinned down to anything
3 on that. I understand that. I just really want to know
4 what's been before the Judge and what he has ruled on and
5 what he hasn't ruled on. I just have that one order, which
6 doesn't seem to me to address 1601 at all. So, Mr. Huebner,
7 were you going to say something?

8 MR. HUEBNER: Your Honor, just one very small
9 point, which is, you know, the idea from the estates'
10 perspective of, you know, multiple law firms now moving to
11 both prepare, respond to, and respond to supplemental
12 pleadings on new topics that have been briefed in the first
13 instance. At the next omnibus when -- and I'm probably
14 going to say something that's just totally wrong, but I'll
15 just take a flyer. It may not even be ripe by the next
16 omnibus or it may ultimately be obviated by events and
17 rulings that happen in New York State Court thereafter, or
18 this trial may not happen until July or August and the world
19 may look totally different.

20 I just wonder if -- and, again, I'm not even sure
21 if this is the Debtors, I'm just sort of thinking out loud
22 to try to save everyone cost and time for something that it
23 sounds like may actually become obviated. You know, could
24 we have some process where the parties reassess with one
25 another whether they believe this is really, in fact, needed

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1 and ripe for the very next omnibus on May 21st. And if, for
2 example, all the estate people and would be guided obviously
3 by, you know, others, including Mr. Nachman would even go on
4 with his New York trial, say that this won't even be ripe by
5 June 21st, you know, or July 21st and there's no reason to
6 do that briefing.

7 THE COURT: That's a good point. I mean, I don't
8 think anyone wants there -- any clients wants there to be
9 unnecessary expense here, so that's fine. I'm not requiring
10 you to submit the brief. If you want to put this off and
11 adjourn it to hearings down the road, that's fine.

12 MR. HUEBNER: Yes. Again, I'm not the movants, so
13 I don't want to box anyone in and all just to --

14 THE COURT: Right.

15 MR. HUEBNER: I would suggest to the parties just
16 caucus, not omnibus logged in front of the Court. And
17 obviously, if the movants feel very strongly that this must
18 be on May 21st and the respondents strongly disagree, we can
19 have a quick conference with the Court about that view.
20 Because, you know, to spend another potential five or six
21 figure number -- because, remember, we're paying for the
22 debtors' professionals, the committees' professionals, the
23 ad hoc professionals -- and, you know, that may not be the
24 end of the list by the time the case is over. I'm just very
25 mindful that this is a burden. I understand we're --

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1 THE COURT: No, I understand.

2 MR. HUEBNER: -- living complicated lives to begin
3 with at present.

4 THE COURT: Right, I agree. I agree, and frankly,
5 that goes to my point on any case, so let's make that the
6 last word on this. I don't believe there's anything more on
7 the agenda.

8 MR. HUEBNER: No, there is not, Your Honor,
9 although it --

10 MR. TROOP: Nothing else on the agenda, Your
11 Honor. This is Andrew Troop for the non-consenting states.

12 THE COURT: Right.

13 MR. TROOP: Can you hear me, Your Honor?

14 THE COURT: Yes, I can.

15 MR. TROOP: Your Honor, as you know, there are
16 discovery disputes brewing in this case.

17 THE COURT: Did you get my email in response to
18 yours?

19 MR. TROOP: I did. I did, Your Honor, but I just
20 wanted to raise sort of a preference question with you on
21 this. It looks like there are going to be disputes between
22 the creditors' committee and the Sacklers as well over the
23 first 2004 motion that you entered. And we were thinking
24 that we would like to suggest and suggest to your clerk and
25 your calendar that we schedule a hearing for next Wednesday

1 with a response deadline from the Sacklers first and then
2 giving us an opportunity within 24 hours to respond, us
3 being the UCC and the non-consenting states, and wanted to
4 confirm whether that was a process that would work for Your
5 Honor.

6 THE COURT: I don't know if that date works. I
7 have a trial on Monday that I think may carry over into
8 Wednesday. You should check with Miss Lee.

9 And leaving that aside, I appreciate that the
10 parties have been working hard behind the scenes to narrow
11 their differences. I don't want the -- a formal hearing on
12 a motion to enforce a Rule 2004 order to be sort of a free
13 flow discovery conference. I want the parties to identify
14 their specific issues. If they can do that and they just
15 haven't been able to get any farther, then we should have
16 that hearing quite promptly. If they've not been able to do
17 that yet, they need to do that first and then we'll have the
18 hearing promptly after that.

19 MR. TROOP: Your Honor, I think that we've
20 narrowed the issues and there isn't a clear (crosstalk).

21 THE COURT: Yeah, that's fine. And I don't doubt
22 that because I know the parties have been working hard to do
23 that. So I think probably the issue is just going to be
24 whether it should be Wednesday or Thursday or Friday next
25 week. You can check with Miss Lee on that point.

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1 MR. TROOP: We'll do that promptly, Your Honor.

2 Thank you.

3 THE COURT: Okay. Then as far as the submissions,
4 you know, you can tailor them depending on what date she
5 gives you but tell her that it should be next week.

6 MR. TROOP: We'll do, Your Honor. Thank you.

7 THE COURT: Okay, thanks. All right, so I believe
8 that concludes today's hearings, so I'll see you, at least
9 most of you in May, some of you probably next week on the
10 discovery issue.

11 MR. GAGE: Thank you, Your Honor. Just one final
12 process point just to give the Court comfort. I have
13 continued -- each time we've had a bump in the hearing, I've
14 actually been giving the Court Solutions CO a real-time
15 update, so he knows exactly what problems we're
16 experiencing. And he already is -- his whole team is
17 coordinating with the SDNY and the SDNY's Bankruptcy Clerk's
18 office to figure out exactly what happened and why your
19 dashboard was frozen. So, you know, no extra charge.
20 Friend of the People trying to make things smoothed out.

21 THE COURT: Very well, thank you.

22 MR. GAGE: Even at 80 percent, it's all good.

23 THE COURT: All right, okay. Thank you.

24 MR. TROOP: Thank you, Your Honor.

25 THE COURT: Okay.

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1 (Whereupon these proceedings were concluded)
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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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Sonya M. Ledanski Hyde

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20 Veritext Legal Solutions

21 330 Old Country Road

22 Suite 300

23 Mineola, NY 11501

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25 Date: April 24, 2020

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